

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 RODDY HORSLEY,  
12 Plaintiff,

13 v.

14 WASHINGTON STATE, *et al*,  
15 Defendants.

Case No. C08-5434RBL-KLS

ORDER TO SHOW CAUSE

16  
17 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §  
18 636(b)(1), Local Magistrates Rules MJR 3 and 4, and Rule 72 of the Federal Rules of Civil Procedure.  
19 The case is before the Court upon the Court's review of the complaint. After reviewing the complaint and  
20 the balance of the record, the Court finds and orders as follows:

21 A complaint is frivolous when it has no arguable basis in law or fact. Franklin v. Murphy, 745  
22 F.2d 1221, 1228 (9th Cir. 1984). When a complaint is frivolous, fails to state a claim, or contains a  
23 complete defense to the action on its face, the court may dismiss an *in forma pauperis* complaint before  
24 service of process under 28 U.S.C. § 1915(d). Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)  
25 (*citing* Franklin v. Murphy, 745 F.2d 1221, 1227 (9th Cir. 1984)).

26 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (i) the conduct complained of  
27 was committed by a person acting under color of state law and (ii) the conduct deprived a person of a  
28 right, privilege, or immunity secured by the Constitution or laws of the United States. Parratt v. Taylor,  
451 U.S. 527, 535 (1981), overruled on other grounds, Daniels v. Williams, 474 U.S. 327 (1986). Section

1 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements are present.  
2 Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985).

3 Plaintiff also must allege facts showing how individually named defendants caused or personally  
4 participated in causing the harm alleged in the complaint. Arnold v. IBM, 637 F.2d 1350, 1355 (9th Cir.  
5 1981). A defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of supervisory  
6 responsibility or position. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694 n.58  
7 (1978). A theory of *respondeat superior* is not sufficient to state a section 1983 claim. Padway v.  
8 Palches, 665 F.2d 965, 968 (9th Cir. 1982).

9 In his complaint, plaintiff names as defendants Washington State, the Washington State  
10 Department of Corrections (“DOC”) and those responsible for drafting, implementing, and/or complying  
11 with transportation standards policy directive number 420.100. In essence, plaintiff alleges he suffered  
12 both physical and emotional harm, due to the inability of prison staff to modify that policy directive to  
13 allow him to be taken to a hospital more quickly during a medical emergency he was experiencing. He  
14 requests relief in the form of an injunction, as well as compensatory and punitive damages. Plaintiff’s  
15 complaint, however, fails for a number of reasons.

16 First, as noted above, plaintiff has named Washington State as a defendant in this matter. The  
17 Eleventh Amendment, however, reads in relevant part:

18 The Judicial power of the United States shall not be construed to extend to any suit in  
19 law or equity, commenced or prosecuted against one of the United States by Citizens of  
another State, or by Citizens or Subjects of any Foreign State.

20 U.S. Const. Amend XI. Under the Eleventh Amendment, therefore, a state is not subject to suit by its  
21 own citizens in federal court. Edelman v. Jordan, 415 U.S. 651, 662-63 (1974). Accordingly, plaintiff  
22 may not sue Washington State in this Court.

23 The Washington State Department of Corrections, furthermore, is a state agency, and, as an arm of  
24 the state, is immune from suit in federal court under the Eleventh Amendment as well. Howlett v. Rose,  
25 496 U.S. 356, 365 (1990); Will v. Michigan Dep’t of State Police, 491 U.S. 58, 70 (1989). An entity that  
26 has Eleventh Amendment immunity also is not a “person” within the meaning of 42 U.S.C. § 1983.<sup>1</sup>

---

27  
28 <sup>1</sup>Section 1983 reads in relevant part: “Every person who, under color of any statute, ordinance, regulation, custom, or  
usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or  
other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution

1 Howlett, 496 U.S. at 365. Thus, the DOC is immune from liability here too.

2 Finally, plaintiff has failed to allege any individually-named defendants caused or personally  
3 participated in causing the harm alleged. While plaintiff also sets forth as defendants in general those  
4 responsible for drafting, implementing and/or complying with transportation standards policy directive  
5 number 420.100, he does not actually name any individual persons. Given that, as discussed above,  
6 neither Washington State nor the DOC may be sued here by plaintiff, plaintiff's complaint thus contains  
7 no named defendants upon whom liability may be imposed. In other words, plaintiff's lawsuit is without  
8 any opposing party.

9 Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff shall file  
10 an amended complaint, curing, if possible, the above noted deficiencies, or show cause explaining why  
11 this matter should not be dismissed by **no later than August 23, 2008**. The amended complaint must  
12 carry the same case number as this one. If an amended complaint is not timely filed or if plaintiff fails to  
13 adequately address these issues, the Court will recommend dismissal of this action as frivolous pursuant  
14 to 28 U.S.C. § 1915, and such dismissal will count as a "strike" under 28 U.S.C. § 1915(g).

15 Plaintiff is advised that an amended pleading operates as a *complete* substitute for an original  
16 pleading. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992) (citing Hal Roach Studios, Inc. v.  
17 Richard Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990) (as amended), *cert. denied*, 506 U.S. 915  
18 (1992). Thus, if plaintiff chooses to file an amended complaint, the Court will not consider his original  
19 complaint.

20 The Clerk is directed to send plaintiff the appropriate forms so that he may file an amended  
21 complaint. The Clerk is further directed to send a copy of this Order and a copy of the General Order to  
22 plaintiff.

23 DATED this 24th day of July, 2008.

24  
25 

26 Karen L. Strombom  
27 United States Magistrate Judge  
28

---

and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983.